

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF FINANCE

HARRY BLACK, Director
454 City Hall
Baltimore, Maryland 21202
410-396-4940

October 7, 2013

The Honorable Bernard C. "Jack" Young
President, Baltimore City Council
100 North Holliday Street, Room 400
Baltimore, Maryland 21202

Dear Mr. President:

I appreciated receiving your October 1, 2013 letter to me concerning real property tax credits. We both share a commitment to the responsible collection and use of the City's tax revenue. Thus, I have decided in this instance to waive the attorney-client privilege for the enclosed January 31, 2013 memo from the Law Department to the Finance Department concerning the credit against real property tax for eligible improvements to historic properties in the City (hereinafter the "CHAP" credit). It details why the CHAP tax credit was calculated incorrectly.

As the memo indicates, the law in Maryland is that if a government made a mistake in calculating the tax credit (as was done with CHAP credits) then the government cannot go back and ask for more money after the citizen has paid the tax bill. However, if the citizen has taken a credit to which he or she was not entitled, the government can recoup the money. For example, in Homestead Tax Credits where a citizen claims to use a property as a primary residence and the government discovers that is not the case, the government can send a revised bill for more money. The government can also recoup money where property has totally escaped taxation, such as property incorrectly designated as charitable. I want to assure you that Finance is following the law consistently for every tax payer, residential or commercial.

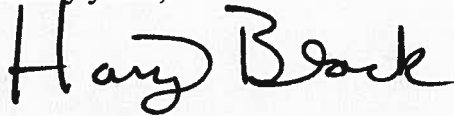
I also want to address the City Council's recent suggestion that the Finance Department hire an independent auditor to audit the tax credits or an outside accountant to calculate the credits. While the City could pay for such assistance in making these calculations, it is the City's job to make those calculations and the City would be responsible for any errors made by the outside entity. Additionally, the Finance Department discovered the errors in the CHAP tax credit and other credits and has worked diligently to correct those errors. The Finance Department now calculates the CHAP tax credit based on the property valuation information given by SDAT. As I am sure you are aware, SDAT is the only entity that can value property and the City cannot independently assess property values. The Finance Department is working closely with the Law Department to explore whether a change in state law could assist the City in calculating these credits.



Page 2 of 2


I will continue to keep you and the City Council apprised of our continued efforts to make sure that the City's tax credits are properly calculated and collected.

Sincerely yours,

A handwritten signature in cursive script that reads "Harry Black". The signature is written in dark ink and is positioned below the "Sincerely yours," text.

Harry E. Black
Director of Finance

cc: George Nilson, City Solicitor
Hilary Ruley, Attorney

FROM	NAME & TITLE	Hilary B. Ruley, Assistant City Solicitor ✓	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Law		
	SUBJECT	CHAP Tax Questions		

TO Henry Raymond
Deputy Director of the Department of Finance

DATE: January 31, 2013

Background:

State law allows the City to give its residents who make improvements to eligible historic properties a credit (the "credit") against the amount of real property tax owed on those properties. Md. Code, Tax-Prop., §9-204.1. The City may "implement, by law, a program that provides for a property tax credit not to exceed the difference between: (i) the property tax that, but for the tax credit, would be payable after the completion of eligible improvements; and (ii) the property tax that would be payable if the eligible improvements were not made." Md. Code, Tax-Prop., §9-204.1(d)(1). The state has given the City the power to "adopt any requirements and procedures that are necessary or appropriate to carry out the purposes of this section." Md. Code, Tax-Prop., §9-204.1(d)(1).

The City has decided to make the credit available as codified in Section 10-8 of Article 28 of the City Code. The amount of this credit is:

the difference between:

- (i) the property tax that, but for the tax credit, would be payable after the completion of the eligible improvements; and
- (ii) the property tax that would be payable if the eligible improvements were not made.

City Code, Art. 28, §10-8(d)(this calculation may be altered if the property is receiving a Maryland Enterprise Zone Tax Credit or the improvements are valued at over 3.5 million dollars).

The City's Department of Finance ("Finance") appears to have been calculating this credit by taking the difference between the assessment that occurs after renovations (herein called the "Post Renovation Assessment") and the old assessment that was in place prior to the renovations (called the "Base Year Assessment"). City Code, Art. 28, §10-8(d). The owner is entitled to that credit for ten years, with credits on certain multi-million dollar projects being reduced over a 10 year time period. City Code, Art. 28, §§10-8(e), (g). According to rules promulgated by Finance, the amount of the credit cannot exceed the tax liability, thereby granting a refund. City Code, Art. 28, §10-8(k).

In practice, the City has not been calculating these credits. Rather, a decision was made some time ago to allow the State Department of Assessments and Taxation ("SDAT") to

calculate the credit amount because Finance decided that it lacked the staff to make these calculations.

The City anticipated that the program would work as follows:

The resident would submit an application for the credit to the City's Commission for Historical and Architectural Preservation ("CHAP"). City Code, Art. 28, §10-8(d). Once CHAP certified that the property could be eligible for a property tax credit (*i.e.* in an historic area), then the property owner would undertake eligible improvements to the property. City Code, Art. 28, §10-8(e). Once the eligible improvements were made satisfactorily, CHAP would certify that the property was entitled to receive the credit.

The City (either Finance or CHAP) would alert SDAT that a property was entitled to the credit. The City assumed that this would trigger SDAT to reassess the property with the improvements in order to determine the Post Renovation Assessment.

The City assumed that the Post Renovation Assessment would be phased-in over a 3 year period (in all but special cases not relevant here), making the tax bill reflect the true value of the property in the third year of the assessment cycle.

Finance conducted an audit of this tax credit program. The audit found:

- Credits Received In Error:
 - 44 occurrences where SDAT placed a credit on a real property tax bill in error. These 44 properties have been receiving the historic tax credit in error for 1 to 10 years. These properties were never certified by CHAP and SDAT is unable to explain why these properties have no City records filed with the CHAP, but have SDAT generated paperwork that provides for the credit.
 - 21 properties receiving the credit that were preliminarily certified by CHAP, but did not receive the required final certification.
- Credits Calculated Incorrectly:
 - Up to 60% of all properties receiving the credit have been granted an incorrect credit amount over the past 7 years. This is because SDAT was using different property values to calculate the Base Year Assessment:
 1. Full Cash Value Prior to Renovation: SDAT is using the full cash value of the property in the year immediately preceding renovations.
 2. Purchase price: SDAT is using the purchase price to calculate the Base Year Assessment even when the owner has not submitted an appeal of their property valuation and the appeal has not been granted by SDAT. There is no paperwork to discuss the decision to use this number.
 3. Adjusted value: SDAT is modifying the Base Year Assessment because of information on the actual condition of the property

before improvements were made (e.g. mold). Again, there is no paperwork to explain these alterations.

4. Phase in Assessment: this is the amount used in the first or second year after an assessment to phase in the assessment.
 5. Inapplicable Phase in Assessment: the amount to phase in an assessment that does not correspond to the year of the CHAP application.
- o All properties are erroneously having their credits recalculated each year using the current assessment value as the amount of the value of the property after renovations.

Questions:

You have asked for the opinion of the Law Department on seven questions regarding the tax credit given for the rehabilitation of historic properties. Additionally you asked another twelve questions related to the basis of the tax. These questions will be answered serially below.

Answers:

Generally:

The term "assessment" in Maryland tax law includes BOTH the valuation of the real property and estimating the tax due based on that valuation. *Grosvenor v Supervisor of Assessments*, 271 Md. 232, 236-37 (1974). The levy is the sending of the bill. *Id.* Taxes are imposed each year. Md. Code, Real Prop., §6-204; *see also* Md. Code, Real Prop., §§1-101(i); 8-104 (the date of finality means the date the taxes are assessed based on the value of the real property on that day (Jan. 1)). Tax bills are prepared and the tax is levied (*i.e.* becomes due) on July 1. *See Board v. Garrett*, 287 Md. 440, 452-53 (1980).

A property that has been erroneously exempted from all tax (for example an incorrect non-profit determination) is considered property that has escaped assessment under Maryland law. *Grosvenor v Supervisor of Assessments*, 271 Md. at 237. This is true "even if by an intentional, although mistaken act of the tax assessor" the property has not been assessed at all. *Id.* at 238.

However, this is not the same as property incorrectly taxed, *i.e.* where the estimate of the amount of tax due was incorrect. *Id.* at 241. In those cases, the escaped property statute does not apply because the property was known to the tax assessor and a tax was levied. *Id.* Escaped property statutes "were not intended to authorize a retroactive increase in the assessment and taxation for prior years because of an asserted mistake in valuation, or some other alleged mistake." *Id.* at 241 *accord* *Montgomery County Bd. of Realtors, Inc. v. Montgomery County*, 287 Md. 101, 108 (1980) ("attempt by Montgomery County to reassess and tax real property after the date of finality is in direct conflict with" state law); *see also Pheasant v. City of Nashua*, 720 A.2d 73, 75-76 (N.H. 1998). Looking at other cases, Maryland's highest court observed that "the property involved was in fact assessed and some tax money was paid for the past years in question. Under these circumstances, the courts held that escaped property statutes were not

applicable and that the tax authorities could not collect more taxes on the theory that the prior assessment was defective or void." *Grosvenor*, 271 Md. at 241.

Thus, the City is prevented from levying taxes for prior years where the calculation of the taxes (termed the assessment) was erroneous.¹ Thus, for all prior tax years, what has happened already cannot be undone and the City is unable to capture the tax revenue lost by issuing new tax bills.

Moreover, state law allows the City Solicitor and the local tax assessor to abate an assessment to prevent an injustice. Md. Code, Real Prop., §8-419. Finance can approach SDAT and ask for its cooperation in absolving these tax payers from the taxes they would have owed had their taxes been correctly assessed and had their bills reflected the correct levy of that tax. This can be done without any hearings and this decision by the Solicitor and the local assessor is not reviewable in Circuit Court. *See SDAT v. Clark*, 281 Md. 385, 398 (1977). This would be in the form of an order abating the past taxes owed. Md. Code, Real Prop., §14-901

Along with such an order, Finance could send these taxpayers notice of the correct calculation going forward (apart from the next tax bill, which Finance notes would not itemize this credit). Finance must also give refunds to any taxpayers so entitled. Md. Code, Real Prop., §§14-905, 14-906, 14-915; *see also* Md. Code, Real Prop., §14-916(b)(refund cannot be paid if a particular taxpayer is delinquent on state or local taxes, charges or fees). The refund period is for the past 3 years if the taxpayer files a claim for a refund. Md. Code, Real Prop., §14-915. The City must give a refund for any instances in which a taxpayer paid their property tax in advance regardless of whether the taxpayer makes a claim for such a refund. Md. Code, Real Prop., §§14-906; 14-611("Subject to §14-919 of this title, on the final determination of an appeal under Subtitle 5 of this title, any money paid by a taxpayer that exceeds the amount properly chargeable under the determination shall be refunded at the same rate of interest that the taxes would have borne if the taxes were determined to have been overdue.") Therefore, the Law Department recommends engaging the services of forensic accountants to determine if any taxpayers are entitled to a refund based on the errors discovered.

In accordance with this general picture, Finance's specific questions are addressed below:

Specifically:

- 1. Does the Finance Director have the authority to reduce the number of years of taxes recaptured for all properties erroneously receiving the historic credit as a matter of policy? Billing the customers for up to 7 years of taxes now owed due to City/State error may result in some properties going into tax sale.**

¹ Although Maryland has a statute of limitations of seven years to bring an action to collect on an unpaid levy of taxes, the statute would not be applicable here where taxes were already imposed. *See* Md. Code, Tax-Property, §14-1101("any tax imposed under this article may be collected only on or before 7 years from the date the tax is due.")(emphasis added); *see also* Md. Code, Tax-Property, §14-864.

As stated above, Finance is unable to recapture from taxpayers the taxes that would have been owed had the credit been properly calculated. The seven year statute of limitations does not apply. See Footnote 1, *supra*.

- 2. Is it permissible to waive retroactive penalty and interest on these customer's bills and only charge them penalty and interest prospectively if they do not pay their reopened bill within 30 days?**

As stated above, there can be no reopened bill. Therefore, there would be no imposition of penalties or interest on any prior amount of tax that would have been owed had the credit been calculated correctly.

In contrast, Finance *must* impose penalties and interest on amounts actually billed (*i.e.* on the amount on the original bill that was sent to the taxpayer previously or the amounts billed going forward) that are not paid timely. Section (39) of Article II of the City Charter authorizes the City to provide "by ordinance or otherwise for the prompt collection of taxes due the City." The City has provided by ordinance for the Director of Finance to collect all the taxes owed to the City. City Code, Art. 28, §4-1. The City has also provided by ordinance that the Director of Finance must impose a 1% penalty and a 1% interest on all sums owed by their due dates. City Code, Art. 28, §6-2; *see also* Md. Code, Real Prop., §§14-605("If a person fails to pay property tax when required by this article, the person shall pay interest on the total tax liability on property for each month or fraction of the month from the date the property tax payment is required to be paid under Title 10 of this article to the date the tax is paid."); 14-703 ("If a person fails to pay property tax when required by this article, the person shall pay a tax penalty imposed under §14-702 of this subtitle on the total tax liability on property for each month or fraction of a month from the date the property tax is required to be paid under Title 10 of this article to the date the tax is paid.").

Nowhere in the City Code does the Director of Finance have discretion to fail to collect taxes due or to abate the required interest and penalties for any reason. *See, e.g., Hylton v. Mayor and City Council of Baltimore*, 268 Md. 266, 282 (1972)(generally inclusion of one item in a statute implies exclusion of another thing not mentioned)(citations omitted). All the Director of Finance can do for taxes already billed is to give a pre-payment discount of a half of one percent if paid on or before July 31 of the year due. City Code, Art. 28, §6-1.

- 3. Is it permissible to waive retroactive and prospective penalty and interest on accounts due to a recapture of a credit granted in error by the City/State? Penalty and interest would only apply if the account becomes delinquent after entering the payment plan.**

The City may not recapture a credit granted in error and therefore may not impose penalties and interest on amounts not billed. As stated above, Finance is required to impose penalties and interest for any amounts actually billed (either in the past or going forward).

- 4. Can we extend the payment term for a payment plan beyond 12 months? An account could owe over \$300,000 due to a misapplied historic credit.**

The City may not recapture a misapplied credit. Therefore, there can be no payment plan for amounts that should have been billed but were not.

Section 10-8(k)(1) of Article 28 of the City Code does allow Finance the ability to adopt rules and regulations to implement this credit program and to "settle disputed claims that may arise in connection with the credit authorized by this section." Although Finance's regulations would be presumed "valid unless they contradict the Legislature's express language or purpose in enacting the statute," Finance is unable to make "a rule or regulation which is inconsistent or out of harmony with, or which alters, adds to, extends or enlarges, subverts, or impairs, limits, or restricts" the law concerning this credit. See *Benson v. State*, 389 Md. 615, 645 (2005); *Mayor and City Council of Baltimore v. William E. Koons, Inc.*, 270 Md. 231, 236-37 (1973). Rather, Finance must only create rules and regulations "reasonable and consistent with the letter and policy of the statute." *Koons*, 270 Md. at 236-37. Therefore, Finance's regulations for this credit may not try to recapture money that would have been owed had the credit been calculated correctly. However, there does appear to be leeway to enter into a payment plan for taxes due from this year forward if the taxpayer is unable to pay timely.

5. How do we treat properties that have been sold to a new owner during the erroneous credit term?

The credits run with the land, not the owner. Md. Code, Real Prop., §§5-101 (definition of owner determined by SDAT), 10-401 ("Except as otherwise provided in this subtitle, the owner of property on the date of finality is liable for property tax that is imposed on that property for the following taxable year."). Thus, the new owner is only to be taken into account with respect to the mailing of the bill.

6. If we are going to recapture the tax owed on the 44 properties where the credit was granted in error, do we have to recapture taxes owed on the other 1200 properties for the last 7 years of the credit where the credit was calculated incorrectly?

The City may not recapture the tax that would have been owed had it been correctly billed, either for the 44 properties where the credit was granted in error or for the 1200 properties where the credit was calculated incorrectly.

7. Aside from the approximately 1200 properties currently receiving the historic credit, we estimate that there may be another 2000 properties that have concluded the 10 year credit term. Are we also required to recalculate the credits for these other properties?

The City may not recapture the tax that would have been owed had it been correctly billed, either for properties where the credit was granted in error or for properties where the calculation was incorrect. It would behoove Finance, however, to make sure that the properties are properly taxed going forward and that any errors from the past do not result in refunds due to those taxpayers. Md. Code, Real Prop., §§14-906; 14-611.

Additional Questions related to the basis upon which the tax is calculated were asked:

Generally:

The City has the duty of sending out the real property tax bills. See Md. Code, Tax-Property, §6-308(i). The City Code authorizes the Director of Finance to “delegate powers, duties or functions in connection with the administration of the credit authorized by this section to the City Collector or any other employee of the City.” City Code, Art. 28, §10-8(k)(3).

Since the law provides that certain individuals may perform powers, duties or functions related to this credit, courts likely would read that law as prohibiting those not listed from performing those functions. See, e.g., *Hylton v. Mayor and City Council of Baltimore*, 268 Md. 266, 282 (1972)(generally inclusion of one item in a statute implies exclusion of another thing not mentioned)(citations omitted). Therefore, even though Finance had previously relied upon SDAT to calculate the tax owed when this credit was involved, a Court may still hold Finance ultimately responsible for how the credit was calculated. Although, it is also possible that a Court, relying on the definition of assessment as being both valuation and calculation of tax due based on that value, would believe SDAT had some responsibility to properly calculate the credit. See *Grosvenor*, 271 Md. at 236 (“the term ‘assessment’ as used in tax statutes has been given a somewhat fluid and imprecise meaning.”). Regardless, the City should be mindful that moving forward, the credit needs to be calculated correctly.

According to City law, the credit must be calculated as the amount of the tax that would be payable if the eligible improvements were not made (Base Year Assessment) minus the property tax that would be payable after the eligible improvements were made (Post Renovation Assessment). City Code, Art. 28, §10-8(d). This is *not* the difference between the value of the property before and after the credit (for if the renovations increased the value of the property by \$50,000, it was not the intent of the legislature to give a \$50,000 tax credit). Rather, the difference is between the tax that would have been *payable* prior to the renovations and the tax *payable* after those renovations. The operative word is “payable.” Since taxpayers are not required to pay more retroactively than they were billed (unless their property was not on the tax rolls at all- escaped property - that is not the case here), City law requires that the credit be calculated using the amount of money the tax payer was required to *pay*, not the amount that was *due*. Thus, the term “payable” is synonymous with what was “billed.”

As the City law is currently worded, the City has no ability to correct these errors by subtracting the property tax should have been charged after renovations with the tax that should have been charged before renovations. Rather, the City must use the amount the taxpayer was required to pay. Therefore, the City must use as the Base Year Assessment, the amount of tax *payable* for that year prior to renovations. By way of illustration, if a bill with an incorrect amount of tax was sent to the taxpayer in the year prior to renovation, it is that (incorrect) amount that was due that must be used as the Base Year Assessment. Similarly, the Post Renovation Assessment must be the amount that was *payable* after renovations *not the amount that should have been billed*.

SDAT is only required to revalue a property every three years, unless one of six specific things occurs to change "the value of the real property." Md. Code, Tax-Property, §8-104(c)(1).² One of those six things is "substantially completed improvements are made which add at least \$100,000 in value to the property." Md. Code, Tax-Property, §8-104(c)(1)(iii). But there is no obligation to revalue the property if the improvements result in a lesser increase in property value (unless some other independent criterion for revaluation is met).

Since the City credit is calculated on the amounts payable, the City can always calculate this credit. It just may result in the amount of the credit being zero in properties that are improved but not revalued: i.e. the owner pays the same amount before and after renovation because SDAT has not revalued the property.

Even if the City law were changed to make it clear that the numerator in the credit calculation is to be the amount of tax due on the post-renovation revaluation, the City is without the power to require SDAT to make a prompt revaluation of a property. Finance may want to consider asking the General Assembly to change state law to make revaluations required after every historic property renovation. In this way, the City avoids the situation of a property eligible for the credit having been improved but not revalued, making it impossible to determine how the tax amount changes after renovation tax .

Although rules of statutory construction would dictate that an absurd result not be reached, the plain meaning of the word payable appears clear. *See, e.g., Ray v. State*, 410 Md. 384, 405 (2009) ("In statutory interpretation, our primary goal is always 'to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision, be it statutory, constitutional or part of the Rules.'"). Interpretation must give every word effect, avoiding constructions that render any portion of the language superfluous or redundant. *Gillespie v. State*, 370 Md. 219, 222 (2002). If, however, the language is subject to more than one interpretation, the ambiguity is resolved by looking to the statute's legislative history, case law, statutory purpose, as well as the structure of the statute. *Ray*, 410 Md. at 405. Moreover, whether the credit is calculated on the amount payable or the amount owed, the City will have some situations in which the credit amount is likely not what the Mayor and City Council intended. As such, it behooves Finance to introduce a bill to fix the language for this tax credit.

In drafting the new language for this credit, Finance should be mindful that the state law authorizing the City to give a credit does not require that the credit be calculated as Post Renovation Assessment – Base Year Assessment. Md. Code, Tax-Property, §8-202. Rather, the state law caps the credit at that amount. Thus, a local jurisdiction could give a fixed dollar amount of the credit, or could calculate the credit differently. The City, decided in its Code, to provide a credit in the exact amount of the difference between the Post Renovation Assessment

² Although this section provides for revaluation when there is an error, that error must concern the value of the property not the calculation of the tax owed upon it. Md. Code, Tax-Property, §8-104(c)(1); *c.f.* Md. Code, Tax-Property, §8-417(escaped property); *see, e.g., Thomas v. Police Commissioner of Baltimore City*, 211 Md. 357, 361 (1956) ("It is a hornbook rule of statutory construction that, in ascertaining the intention of the Legislature, all parts of a statute are to be read together to find the intention as to any one part and that all parts are to be reconciled and harmonized if possible."). Therefore, the revaluation section cannot be used to recalculate taxes owed when there is a date of finality.

and the Base Year Assessment. Because only SDAT can assess a property, the City has legislated for itself a situation in which some properties are subject to a credit that cannot be calculated for several years.

In accordance with this general background, Finance's specific questions relating to basis are addressed below:

Specifically:

- 1. Going forward should Finance honor the Base Year Assessment Value as set by SDAT and used in prior years to calculate the credit?**

According to the current law, Finance must use as the denominator the "property tax that would be payable if the eligible improvements were not made." City Code, Art. 28, §10-8(d). Again, this is the amount that the owner paid prior to improvements being made. Based on the facts given to the Law Department, it appears that this will be the Base Year Assessment Value as set by SDAT and used in prior years.

- 2. Should Finance refrain from revising the Base Year Assessment Value and recalculating these accounts for prior years and use the correct Base Year Full Cash Value to calculate the credit for the remaining years?**

Yes, Finance should refrain from recalculating these amounts because it has no authority alone to revise the Base Year Assessment. Rather, state law allows the City Solicitor and the local tax assessor to abate an assessment to prevent an injustice. Md. Code, Real Prop., §8-419. Finance can approach SDAT and ask for its cooperation in absolving these tax payers from the taxes they would have owed had their taxes been correctly assessed and had their bills reflected the correct levy of that tax. Once abatement is accomplished, Finance can use the correct denominator to calculate the tax moving forward.

- 3. Should Finance revise the Base Year Assessment Value and recalculate prior year credits?**

Again, Finance should refrain from recalculating these amounts because it has no authority alone to revise the Base Year Assessment. There should be no need to recalculate prior year credits as revised tax bills cannot be sent.

- 4. For the properties that have already completed the 10 year tax credit cycle should Finance retroactively revise the Base Year Assessment amount, therefore revising the credit amount on all of these accounts in prior years?**

No. Finance is not able to recapture these back taxes.

- 5. For the properties that are already in the 10 year tax credit cycle, the credit was calculated using the tax assessment amount as stated on the tax bill in each fiscal year instead of the fixed Triennial Full Cash Value assessment after improvements**

for the property. This has resulted in the credit granted at a higher or lower amount than what the State Law currently stipulates. Do you concur with Linda Barclay's opinion in 2001 to leave mistakes of the past in the past? In other words, we should not go back and attempt to correct past mistakes, but should prepare correct credit calculations going forward for all program participants. This was her recommendation, but the corrections were never made prospectively; the errors continued.

Yes, Finance should not make any retroactive levies of taxes. If Finance wishes to clarify that this credit is calculated once, at the time of eligibility, it may wish to so state in a bill to revise the City Code. The code now could be read to require yearly recalculation if the phrase "payable after the completion of the eligible improvements" is considered to be the amount payable in each of the ten years after renovation. City Code, Art. 28, §10-8(d).

- 6. Moving forward, Finance intends to use the Triennial Full Cash Value assessment after improvements as stated in the State Law as the basis of the credit. Is Finance required to recalculate all the credits granted in past years of the historic credit program?**

Finance should not recalculate any credits given in the past years of the historic tax credit program. Moreover, although the Triennial Full Cash Value assessment after improvements is likely what Finance believes the numerator of the credit calculation should be, as discussed infra, the law currently mandates using the amount of tax payable "after the completion of the eligible improvements." City Code, Art. 28, §10-8(d). Again, it behooves Finance to introduce a bill to amend the City Code to make it clear that the numerator for this calculation is to be the Triennial Full Cash Value.

- 7. Section 6.0 of the City Code entitled "Term of Credit and Commencement of the Credit Term" states that the credit term should begin after final certification by CHAP and the first Assessment done after the improvements have been completed. Presently there is a conflict because SDAT will only perform the assessment outside of the regularly scheduled Triennial Assessment Cycle if the improvements represent an increase of at least \$100,000 to the property assessment value. SDAT has been granting the credit prior to the actual triennial assessment on some of the properties that do not have an increase in value triggering the out of cycle assessment.**

- a. Should Finance recalculate these credits to be consistent and remove the credit on the properties for the years where the credit was applied before the improvements were assessed?**

Finance should not recalculate any credits for prior years.

- b. Should Finance refrain from making this change and allow for those properties to complete their 10 year cycle?**

Finance should apply the credits properly going forward using the amount of the tax payable after renovation and prior to renovation. As discussed, *infra*, the assessment, which includes valuation and credit calculation, and is done yearly. Md. Code, Real Prop., §§1-101(i); 8-104; *see also Grosvenor, supra*. Thus, the City can always calculate this credit by referring to the amounts actually paid.

- c. **Should Finance continue to grant the credit for all the properties once they get the final certification regardless of when the property gets reassessed to include the improvement?**

Yes.

- d. **Should Finance wait until the property is reassessed to include the improvements to start the 10 year credit cycle?**

Since the assessment includes valuation and credit calculation, and is done yearly, the City can calculate the credit by referring to the amount actually paid. Md. Code, Real Prop., §§1-101(i); 8-104; *see also Grosvenor, supra*. As discussed, *infra*, this will result in some properties receiving no credit. To fix this anomaly, Finance should introduce legislation to modify the language in the City Code.

8. **Finance is currently revising the Historic Tax Credit Rules and Regulations. Does Finance have to apply changes to the New Rules and Regulations retroactively or can properties already receiving the Historic Tax Credit be grandfathered?**

There are should be no retroactive applications of rules or regulations. As discussed, *infra*, Finance is unable to make "a rule or regulation which is inconsistent or out of harmony with, or which alters, adds to, extends or enlarges, subverts, or impairs, limits, or restricts" the law concerning this credit. *See Benson v. State*, 389 Md. 615, 645 (2005); *Mayor and City Council of Baltimore v. William E. Koons, Inc.*, 270 Md. 231, 236-37 (1973). Rather, Finance must only create rules and regulations "reasonable and consistent with the letter and policy of the statute." *Koons*, 270 Md. at 236-37. Therefore, Finance's regulations for this credit may not try to recapture money that would have been owed had the credit been calculated correctly.

9. **In the new Rules and Regulations we are stating that the Historic Tax Credit can only be combined with the Enterprise Zone Tax Credit, the Homestead Tax Credit, the Homeowner's Tax Credit and the Targeted Homeowner's Tax Credit. Do you think that this rule is in compliance with the State and City Laws?**

Finance cannot state in regulations how the credits interact because Finance cannot make "a rule or regulation which is inconsistent or out of harmony with, or which alters, adds to, extends or enlarges, subverts, or impairs, limits, or restricts" the existing statutory law. *See Benson v. State*, 389 Md. 615, 645 (2005); *Mayor and City Council of Baltimore v. William E. Koons, Inc.*, 270 Md. 231, 236-37 (1973). Finance can only create rules and regulations "reasonable and consistent with the letter and policy of the statute." *Koons*, 270 Md. at 236-37.

Therefore, Finance's regulations for this credit may not address credit application in any way that expands or enlarges state or City law on this topic.

- 10. In our experience reviewing the credits granted on prior years, we have seen them applied in combination with the Enterprise Zone Tax Credit, the Homestead Tax Credit, the Homeowner's Tax Credit and the Targeted Homeowner's Tax Credit. Based on your interpretation of the City Code, State Law and the Rules and Regulations. Do we need to revise the calculation of prior credits?**

There should not be any revisions of prior year tax bills.

- 11. Do we need to rewrite the City Code to include the Targeted Homeowner's Tax Credit as an allowable credit combination?**

Yes, the current City Code would need to be revised. Currently the City law states that the credit cannot be applied to any property where any other tax credits are applicable. See City Code, Art. 28, §10-8(i).

- 12. To help homeowners deal with large assessment increases on their principal residence, state law has established the Homestead Tax Credit. The Homestead Credit limits the increase in taxable assessments each year to a fixed percentage. Technically, the Homestead Tax Credit is not a "tax credit"; rather, it is a cap on the taxable assessment. The City is reducing the Historic Tax Credit by the Homestead Tax Credit because that is the way SDAT had been calculating the Historic Tax Credit. SDAT told us that when a property is improved part of the improvement assessment is eligible for the Homestead Tax Credit. Because the City is unable to isolate the portion of the Homestead Credit that is related to the improvement, we have been subtracting the full Homestead Tax Credit from the Historic Tax Credit. Our reasoning is that we do not want a situation where the homeowner is not paying taxes on a portion of the assessment amount due to the Homestead Tax Credit cap and is receiving a Historic Tax Credit on the same portion of the assessment. We have been reviewing this calculation and would like a legal opinion. Should the Homestead Tax Credit be deducted from the Historic Tax Credit?**

As noted, the Homestead Tax Credit is not a Tax Credit at all- it is merely a phase in tool. Thus, as the statutes are currently worded, Finance should calculate the credit based on the amount payable prior to the renovation and the amount payable post renovation. If that payable amount is effected by the Homestead Tax Credit (*i.e.* if someone is paying less money because of that "credit"), then Finance must use the amount that will be paid to calculate the credit.

Cc: George Nilson, City Solicitor
Elena DiPietro, Chief Solicitor
Mary Keenan, Chief Solicitor
Victor Tervala, Assistant Solicitor